

**Attorney General Rules Implementing the Tobacco Product
Manufacturers Escrow Enforcement Act
Title 14, Part 250 of the Illinois Administrative Code**

TITLE 14: COMMERCE

SUBTITLE A: REGULATION OF BUSINESS

CHAPTER II: ATTORNEY GENERAL

PART 250

TOBACCO PRODUCT MANUFACTURERS' ESCROW ENFORCEMENT ACT

Section

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AUTHORITY: Implementing and authorized by Section 25 of the Tobacco Product Manufacturers' Escrow Enforcement Act [30 ILCS 169].

SOURCE: Adopted at 27 Ill. Reg. 7719, effective April 16, 2003.

Section 250.10 General

This Part provides for enforcement of the Tobacco Product Manufacturers' Escrow Act [30 ILCS 168], in accordance with the Tobacco Product Manufacturers' Escrow Enforcement Act [30 ILCS 169] (see P.A. 92-0737). The former Act, passed as a result of the Master Settlement Agreement (MSA) entered into between 46 states, including Illinois, and the major tobacco companies, requires tobacco product manufacturers not participating in the MSA to set up qualified escrow accounts and to deposit funds into the accounts based on the number of manufacturers' cigarettes sold in each state. The latter Act provides for enforcement of the escrow obligations.

Section 250.20 Definitions

“AGO” means the Illinois Attorney General’s Office.

“Cigarette” means that term as defined in Section 10 of the Escrow Act [30 ILCS 168], which includes roll-your-own tobacco.

“Department” means the Illinois Department of Revenue.

“Distributor” has the same meaning prescribed in Section 1 of the Cigarette Tax Act [35 ILCS 130], and Section 1 of the Cigarette Use Tax Act [35 ILCS 135],

and, in addition, means a distributor of roll-your-own tobacco in accordance with Section 10-5 of the Tobacco Products Tax Act of 1995 [35 ILCS 143], as appropriate.

“Escrow Act” means the Tobacco Product Manufacturers’ Escrow Act [30 ILCS 168].

“Escrow Enforcement Act” means the Tobacco Product Manufacturers’ Escrow Enforcement Act [30 ILCS 169] (see P.A. 92-0737).

“Filed” means received by the AGO in readable form, however transmitted, or postmarked for delivery by the U.S. mail.

“Liability year” means the calendar year in which a tobacco product manufacturer’s cigarettes are sold in Illinois and to which the requirements of the Escrow Act apply.

“NPM” means non-participating manufacturer.

“Participating manufacturer” has the same meaning prescribed in Section 15(a)(1) of the Escrow Act [30 ILCS 168].

“Stamps or imprints” means revenue tax stamps or imprints as provided for in Section 3 of the Cigarette Tax Act or stamps or imprints evidencing the payment of cigarette use tax as provided for in Section 3 of the Cigarette Use Tax Act, as appropriate.

“Tobacco product manufacturer” has the same meaning prescribed in Section 10 of the Escrow Act.

Section 250.30 Distributor Filings

- a) Each distributor shall report quarterly to the AGO on paper or electronic forms provided by the AGO such information as is necessary for the AGO to ascertain the quantity of each NPM’s cigarettes sold in Illinois by the distributor during the preceding quarter. The quarterly information to be reported shall include:
 - 1) The number of each NPM’s cigarettes sold by the distributor within Illinois, by brand.
 - 2) The number of ounces of each NPM’s roll-your-own tobacco sold by the distributor within Illinois, by brand.
 - 3) The NPM name and address for each brand.
 - 4) The name and address of the person from whom the distributor purchased the brand.
 - 5) The name and address of the first importer of foreign NPM brands.
- b) The information required by subsection (a) shall be filed by the 15th day of the

month following the end of the reporting quarter. The filing for:

- 1) January, February, and March is due on or before April 15.
 - 2) April, May, and June is due on or before July 15.
 - 3) July, August, and September is due on or before October 15.
 - 4) October, November, and December is due on or before January 15 of the following year.
- c) Distributors not selling any NPM brands for the relevant time period shall timely file a form as described in subsection (a) marked “none”.
- d) Distributors shall keep all records relating to or reflecting purchases and sales of NPM cigarettes, which records provide a basis for the filings under subsection (a), for a period of not less than three years after the date of sale.
- e) Distributors not complying with this Section 250.30, or filing false or inaccurate information with the AGO, may be deemed to be in violation of the Escrow Enforcement Act and dealt with in accordance with Section 250.50.

Section 250.40 Prohibition of Sales of Noncompliant NPM Cigarettes

- a) As set forth in Section 15(a) of the Escrow Enforcement Act, a distributor shall not affix or cause to be affixed stamps or imprints to individual packages of cigarettes delivered or cause to be delivered by the distributor in Illinois, and may not otherwise deliver or cause to be delivered in Illinois cigarettes in the form of roll-your-own tobacco, if the tobacco product manufacturer of those cigarettes, including roll-your-own tobacco, has:
- 1) failed to become a participating manufacturer; or
 - 2) failed to create a qualified escrow fund for any cigarettes manufactured by the tobacco product manufacturer and sold in Illinois or otherwise failed to bring itself into compliance with Section 15(a)(2) of the Escrow Act. Compliance includes payment by the manufacturer of the statutorily-prescribed amount into the escrow fund in a timely manner and, where the manufacturer has not timely complied, payment of statutorily-prescribed penalties pursuant to 15(a)(2)(C) of the Escrow Act.
- b) The AGO shall publish a list of participating manufacturers and a list of compliant NPMs who have created a qualified escrow fund and who are otherwise in compliance with Section 15(a)(2) of the Escrow Act. The lists shall be published on the AGO’s web site (www.ag.state.il.us) and shall be revised as new information is received by the AGO.
- c) Distributors who affix or cause to be affixed stamps or imprints to packages of cigarettes manufactured by a tobacco product manufacturer whose name appears on the list of participating manufacturers or on the list of compliant NPMs on the date of stamping or imprinting shall not be deemed to have violated Section 15 of the Escrow Enforcement Act by virtue of that conduct.
- d) Distributors who deliver or cause to be delivered roll-your-own tobacco manufactured by a tobacco product manufacturer whose name appears on the list of participating manufacturers or on the list of compliant NPMs on the date of delivery shall not be deemed to have violated Section 15 of the Escrow

Enforcement Act or subsection (a) of this Section by virtue of that conduct. For purposes of this subsection, “delivery” means sale or otherwise passing out of the possession, custody and control of the distributor.

- e) For purposes of enforcement proceedings in accordance with Section 250.50 of this Part, a distributor shall have as a defense the fact that its conduct falls within that permitted by subsection (c) or (d), provided, however, that the burden shall be on the distributor to establish the defense through documentation prepared contemporaneously with their stamping, imprinting or delivery of cigarettes, as the case may be.
- f) The AGO shall not place an NPM on the list of compliant NPMs provided for in subsection (b) unless:
 - 1) the NPM has had sales in one or more liability years prior to the date of the list’s publication and is in full compliance with its escrow requirements under the Escrow Act as to such sales, including the payment of any applicable penalties under the Escrow Act; or
 - 2) the NPM, not having had sales in one or more prior liability years:
 - A) has established a qualified escrow account under the Escrow Act; and
 - B) is in fact depositing funds into the account on a quarterly basis based on sales of its cigarettes in Illinois during its first liability year of sales.
- g) In determining compliance for purposes of placing an NPM on the list of compliant NPMs, the AGO may consider distributor filings provided for in Section 250.30; the NPM’s escrow agreement, if any, submitted to the AGO; the NPM’s timely deposit of the requisite funds into the escrow account; the requirements for placement on the list as set forth in this Part; and other relevant facts that may come to the attention of the AGO. Any NPM dissatisfied with the AGO’s determination of compliance may submit documents relevant to the determination to the AGO and request review of the determination by an Assistant Attorney General who is designated by the Attorney General to undertake such reviews and who did not participate in the initial determination.
- h) A distributor that affixes or causes to be affixed stamps or imprints to individual packages of cigarettes for delivery in Illinois, or that otherwise delivers or causes to be delivered in Illinois cigarettes in the form of roll-your-own tobacco, which cigarettes are manufactured by a tobacco product manufacturer whose name:
 - 1) on the date of stamping or imprinting, in the case of individual packages of non-roll-your-own cigarettes, or
 - 2) on the date of delivery in the case of roll-your-own cigarettes, does not appear on either the list of participating manufacturers or the list of compliant NPMs, may be deemed to be in violation of the Escrow Enforcement Act and dealt with in accordance with Section 250.50.

Section 250.50 Violations

The AGO may investigate conduct that appears to be in violation of the Escrow Enforcement Act or of this Part and may request the assistance of the Department in accordance with its investigatory powers under the Cigarette Tax Act [35 ILCS 130], the Cigarette Use Tax Act [35 ILCS 135], or the Tobacco Products Tax Act of 1995 [35 ILCS 143]. If the AGO determines that a violation has occurred, it shall give written notice to the distributor that has committed the violation and shall provide written notice of the violation to the Director of the Department of Revenue, including copies of any documents evidencing the violation and a recommendation for revocation or suspension of license pursuant to Section 6 of the Cigarette Tax Act, Section 6 of the Cigarette Use Tax Act, or Section 10-25 of the Tobacco Products Tax Act of 1995, as appropriate.